IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLN.NO.718 OF 2007

Babruvan Lalabuwa Giri
and Ors. ..Applicants

Vs.

State of Maharashtra ..Respondents

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Mr.A.P.Mundargi with Shailesh Kanthari counsel for Applicants
Mrs. A.S.Pai A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : MARCH 20, 2007

P.C.

1. Heard the learned counsel for the applicants and the learned A.P.P. for the State.

2. The applicants are seeking anticipatory bail in C.R.No.7 of 2007 registered at Badlapur Police Station. The said case is mainly under Sections 302, 304, 498-A r.w.34 of IPC.

3. It is the prosecution case that deceased Kalpana was the daughter in law of applicant nos.1 and 2. Applicant no.3 is brother of her husband and applicant no.4 is the wife of applicant no.3.

Kalpana was residing along with her husband Dilip i.e. son of applicant nos.1 and 2, in the matrimonial home along with applicant nos.1 and 2. Kalpana was found to be dead on 18.1.2007 and the cause of death was asphyxia due to strangulation. At that time the applicant nos.1 and 2 were residing along with Dilip and deceased Kalpana. Thus, the death of Kalpana took place in the house of applicant nos.1 and 2 due to strangulation.

4. Mr.Mundargi submitted that Applicant nos.3 and 4 were not residing in the same house as Kalpana and other accused but they were residing separately. However, from the material on record the presence of applicants including applicant nos.3 and 4 in the house of applicant nos.1 and 2 is made out at the relevant time. The statement of Versha Laxman Puri shows that the applicant no.4 Poonam Giri was present in the house of applicant nos.1 and 2 after 12.05 a.m. of 18.1.2007. Kalpana was found dead in the early morning of 18.1.2007. The statement of Amar shows the presence of applicant no.3 in the house of applicant nos.1 and 2 in the early hours of the morning of 18.1.2007. Besides this, the statement

of father of Kalpana shows that there was demand of Rs.10 lakhs for purchasing flat and as the said demand was not met Kalpana was being mentally and physically tortured on account of the said demand by all the applicants.

5. Mr.Mundargi, the learned counsel for the applicants has placed reliance on the decision of the Supreme Court in the case of **Appasaheb and Another Vs. State of Maharashtra; I (2007) DMC 143 (SC)**, and wherein it was held that a demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. In the present case, it is seen that it is not just a case of demand but on account of demand not being met with, Kalpana was mentally and physically harassed by the applicants.

6. Mr.Mundargi thereafter submitted that the statement of father is recorded belatedly and hence, no reliance can be placed on the said statement, however, in my view, this aspect can be gone into after the investigation is complete. At

present, the investigation is going on.

7. Mr.Mundargi also drawn my attention to the observations made in the remand application preferred by the police. However, anticipatory bail cannot be granted or rejected on the basis of averments in the remand report. One has to look into the material gathered by the Investigating Agency. In the present case, the material prima facie shows the involvement of the accused persons.

8. As stated earlier, the applicants have been named in the F.I.R. In my view, the material collected by the prosecution in the present case is such as to point out an accusing finger towards the present applicants. The Apex Court has observed in the decision of the **Directorate of Enforcement Vs. P.V.Prabhakar Rao reported in 1997 S.C.C. (Cri.) 978** that the material gathered by the prosecution is such that it points out an accusing finger towards the accused, it is not a fit case to grant anticipatory bail.

9. In view of the above, the application for anticipatory bail is rejected.

[V.K.Tahilramani, J.]